refused the privilege of amending its answer to include the violation of the iron safe clause. Plaintiff received a verdict, and defendant thereupon moved for a judgment non obstante veredicto and for an order that the amendment be included in the answer. The trial court granted these motions and entered judgment for defendant. On appeal the Supreme Court *held* that by not relying on the defense during the negotiations the defendant did not waive the right to the defense, but since at the trial the request for a directed verdict was properly denied, there was no foundation for judgment non obstante veredicto; and judgment was therefore ordered in accordance with the verdict. *Ennis* v. *Retail Merchants Assoc. Fire Ins. Co.*, (N. D. 1916) 156 N. W. 234.

The courts of this country have differed greatly as to what constitutes a waiver of defense by an insurance company, but since the case of *Brink* v. *Hanover Fire Ins. Co.*, 82 N. Y. 108, the following doctrine has been generally followed: "Such companies may refuse to pay a loss without specifying any ground, and when sued may insist on any available ground; but if they plant themselves upon any specified defense and so notify the assured, they should not be permitted to retract after he has acted on their position as announced, and incurred expense in consequence of it." The basis of this rule is the estoppel, and the difficult question before the courts has been to decide whether all the elements of a technical estoppel need be present. In general, the courts declare that some element of estoppel must be present. *Early* v. *Ins. Co.*, 178 Pa. 631; *Moore* v. *National Acc. Ass'n*, 38 Wash. 31; *Kerr* v. *Milwaukee Mech. Ins. Co.*, 117 Fed. 442; *Cassimus Bros.* v. *Scottish Union & Nat. Ins. Co.*, 135 Ala. 256; *Fraser* v. *Aetna Life Ins. Co.*, 114 Wis. 510. The reason for this being that the law does not favor forfeitures. See 2 BACON, INS. § 435 et seq. The knowledge of all the facts was held to be necessary to establish the waiver in *Security Ins. Co.* v. *Laird*, 182 Ala. 121, and the doctrine of the principal case supports the *Laird* case, since the defendant never learned of the breach of the iron safe clause until at the trial.

MARRIAGE—WHO MAY SUE TO ANNUL?—The plaintiffs individually and as the committee of the person and estate of X, a lunatic, brought an action to annul his marriage on the ground of his incompetency at the time the marriage was contracted. The Domestic Relations Law of New York, § 7, provides that "an action to annul a void or voidable marriage may be brought only as provided in the Code of Civil Procedure." §§ 1747-1748 of the New York Code of Civil Procedure do not provide for a lunatic's committee annulling his marriage. *Held*, that the action was not maintainable in the name of the committee. *Walter* v. *Walter*, (N. Y. 1916) 111 N. E. 1081.

In 26 CYC. 911 the rule is laid down that "in case the injured party is insane and under guardianship, the suit should generally be brought in the name of the guardian." In *Crump* v. *Morgan*, 3 Ired. Eq. 91, 40 Am. Dec. 447 a committee was permitted to maintain an annulment suit in the name of the lunatic. By way of dictum the court stated that the committee might sue in his own name. The suit in the case of *Countess of Portsmouth* v. *Earl of Portsmouth*, 1 Hag. Ecc. 355, was brought by "John Charles, Earl of Ports-

mouth, acting by Mr. Fellows, his committee." The court in *Crump* v. *Morgan,* supra, states that it does not "doubt that a suit for nullity may in England be brought by the committee alone; for in the ecclesiastical courts any party in interest, though a third person, as a committee of a lunatic, or one claiming an estate in remainder after failure of issue, may institute such a suit or intervene in it, as Mr. CHITTY states: 2 Gen. Prac. 460." Under § 1025, R. S. 1881 (Ind.) in the case of *Price* v. *Aughe's Guardian,* 101 Ind. 317, it was held that suit for annulment could be maintained only in the name of the incapable party and not in the name of the guardian. While the holding in the principal case is novel yet it is clear that it is a correct adjudication in view of the New York Statutes.

MUNICIPAL CORPORATIONS—LIMITATION ON INDEBTEDNESS.—Plaintiff, a taxpayer, brought an action to enjoin the issue and sale of bonds for the purpose of refunding an indebtedness incurred in paving the streets and in improving the waterworks system. When these improvements were contracted for, the city was indebted beyond the limit set in the CONSTITUTION OF 1895, Art. 8, § 7. Subsequent to this, an amendment to the constitution was passed which made § 7 ineffective, as far as it applied to the indebtedness of the defendant city "already incurred." The refunding was begun pursuant to the authority conferred in this amendment. It was *held,* that the amendment validated the debt which was created when the city had no power to contract for such improvements under the constitution, especially when no vested rights were impaired. *Lucas* v. *City of Florence,* (S. C. 1916) 87 S. E. 996.

The decision giving effect to the amendment is not open to debate. Either as an enabling act or as a measure to make good a moral obligation, the conclusion is well supported, *United States* v. *Realty Co.,* 163 U. S. 427. However the conclusion of the court as to the legality of refunding a debt of this kind without the aid of an enabling act, is a doubtful one. The rule announced from the case of *Luther* v. *Wheeler,* 73 S. C. 83, in terms stated in the principal case, that a recovery could be had for these improvements, when the debt was contracted in the face of a constitutional provision, is not supported by good authority. The following cases deny a recovery, under such circumstances, on either an express or an implied contract. *Litchfield* v. *Ballou,* 114 U. S. 190; *Jutte & Folly Co.* v. *City of Altoona,* 94 Fed. 61; *Gamewell Fire Alarm Tel. Co.* v. *City of Laporte,* 96 Fed. 664, affirmed in 102 Fed. 417; *Wykes* v. *City Water Co. of Santa Cruz,* 184 Fed. 752, affirmed in 202 Fed. 357; *Pilling* v. *City of Everett,* 67 Wash. 109; *Ft. Dodge Elec. Light & Power Co.* v. *City of Ft. Dodge,* 115 Ia. 568; *State* v. *City of Helena,* 24 Mont. 521; *Herman* v. *City of Oconto,* 110 Wis. 660; *Balch* v. *Beach,* 119 Wis. 77; 14 COL. L. REV. 70; DILLON, MUNICIPAL CORPORATIONS. (5 Ed.) § 190 et seq. If the rule announced in the principal case is in fact the true rule of *Luther* v. *Wheeler,* supra, the purpose of a constitutional limit of municipal indebtedness is nugatory in South Carolina. A careful examination will make it evident that the decision in *Luther* v. *Wheeler* does not support the broad rule, as stated in the principal case. That decision had reference to contracts made payable out of current revenue, hence the debt was not one to which the con-